



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2022-0612; FRL-10300-01-R8]

Approval and Promulgation of Implementation Plans; Colorado; Revisions to Colorado

Code of Regulations; Regulation Number 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to Regulation Number 3 of the Colorado Code of Regulations (CCR) submitted to the EPA by the State of Colorado on March 22, 2021. These revisions reflect changes made by the State to update dates of incorporation by reference of sections of the Code of Federal Regulations (CFR) related to Global Warming Potentials (GWPs). The revisions also include updated references to other sections of the CCR that were previously moved to a new location as well as changes to Regulation 3 to reflect digitalization of public notice and comment procedures. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2022-0612, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish

to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Matthew Lang, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6709, email address: lang.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

On March 22, 2021, the State of Colorado submitted SIP revisions to EPA for approval which included Serious ozone nonattainment area required elements for the Denver Metro/North Front Range nonattainment area, conformity related revisions, and revisions to Regulation Number 3 and Regulation Number 7 of the CCR. In this action we are solely addressing the submitted revisions to Regulation 3. All other components of the March 22, 2021 submittal are not being addressed in this rulemaking. The revisions that are the subject of this proposed rule include revisions to Regulation 3, Parts A (Concerning General Provisions Applicable to

Reporting and Permitting), Part B (Concerning Construction Permits) and Part D (Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration) and are described further in section II of this preamble. Revisions to Regulation 3, Part C that are included in the State’s submittal are included for completeness and are not being proposed for approval into the Colorado SIP by the EPA since Regulation 3, Part C is not included in the SIP. Therefore, the revisions to Regulation 3, Part C that are included in the State’s submittal are not being addressed in this action.

II. The EPA’s Evaluation

On March 22, 2021, the State of Colorado submitted revisions titled “Regulation Number 3, Regulation Number 7, Air Quality Standards, Designations and Emission Budgets, and Ozone State Implementation Plan Element.”¹ Colorado met the reasonable notice and public hearing requirements of CAA section 110(l) for these revisions through reasonable notice published on September 26, 2020, in the Denver Post, and a public hearing held on December 16-18, 2020.²

A. Revisions to Regulation 3, Part A (General Provisions Applicable to Reporting and Permitting)

Sections 1.B.10 and 1.B.44.b(i)

In the submitted revisions, the date of incorporation by reference of Table A-1 – Global Warming Potentials at 40 CFR part 98, subpart A was updated to reflect revisions made to Table A-1 by the EPA on December 11, 2014.³ The previous date of incorporation by reference of November 29, 2013, is replaced with December 11, 2014, by the State’s submitted revisions in both sections 1.B.10 and 1.B.44.b(i). No other revisions to Regulation 3, Part A were submitted.

B. Revisions to Regulation 3, Part B (Construction Permits)

Sections III.C.1.e, III.C.4, and III.D.1

¹ Letter dated March 22, 2021, From Jill Hunsaker Ryan, Executive Director, CDPHE, to Deb Thomas, Acting Regional Administrator, EPA, Region 8 (“CO SIP Revision”).

² CO SIP Revision, Document Set 1, Attachments 2 and 5.

³ CO SIP Revision, Document Set 4, Attachment 2, Pages 1-2.

The State's submitted revisions to Regulation 3, Part B include several grammatical revisions, an updated reference to Regulation 23 regarding sources submitting applications for a Best Available Retrofit Technology (BART) determination or BART alternative, and revisions to public comment procedures under Part B.⁴ The updated reference reflects the move of regional haze provisions from Regulation 3, Part F to Regulation 23. The grammatical revisions and updated reference are clerical in nature and do not substantively change these sections of Regulation 3, Part B. In addition to these clerical revisions, the State's submittal also included revisions to the public comment procedures contained in sections III.C.4 and III.D.1 of Part B. The revisions to section III.C.4 clarify that the Colorado Air Pollution Control Division (APCD) may provide the county clerk of the county in which a source is, or will be located, with copies of construction permit applications, the preliminary analysis, and the draft permit or information on how to access digital versions of these documents. The revisions describe that such documents provided directly to the county clerk may be in digital or hard copy format. The revisions to section III.C.4 further clarify that when the APCD sends electronic notice to persons requesting notice of permit applications subject to public notice requirements that such electronic notice may include email notification to persons on an email list maintained by the APCD. The revision to section III.D.1, which outlines the timeframes that the APCD will grant permits, clarifies that sources subject to the provisions of Part D, section V and VI are those sources described in the section that may require a public comment hearing.

C. Revisions to Regulation 3, Part D (Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration)

Sections II.A.11.a(viii), IV.A, IV.A.1, and IV.A.7

The State's submitted revisions to Regulation 3, Part D include clarifying revisions to public notice and comment procedures for New Source Review (NSR) permit applications as

⁴ CO SIP Revision, Document Set 4, Attachment 2, Pages 3-5.

well as revisions which update language to align with corresponding federal language.⁵ In sections II.A.11.a.(viii), IV.A, IV.A.1, and IV.A.7 of Part D, language that requires filing of permit related materials with the county clerk is removed. This removed language relating to the availability of permit related materials is replaced with newly added language in section IV.A of Part D detailing how the APCD will make available in at least one location in each region in which a proposed source would be constructed, copies of all materials submitted by an applicant, a copy of the preliminary permit determination, and a copy or summary of other material, if any, that were considered in making the preliminary determination. Additionally, the revisions to section IV.A describe that this requirement may be met by making such materials available at a physical location or on a public website identified by the APCD. The language added to section IV.A aligns with the language found at 40 CFR 51.166(q)(2)(ii). The submitted revisions to section IV.A also clarify that the APCD will send written or electronic notice to persons requesting notice of permit applications and that this notice may include email notification to persons on an email list developed and maintained by the APCD. Following a final decision on a permit application subject to Part D, additional revisions to Part D, section IV.A.7 require that the APCD make available for public inspection the decision and all public comments in accordance with the defined notification procedure in section IV.A. Finally, the state submittal includes a clerical revision to the title of Regulation 3, Part D section IV to reflect that this section describes public hearing requirements in addition to public comment requirements.

III. Proposed Action

We are proposing to approve the revisions submitted by the State of Colorado on March 22, 2021, to Regulation 3, Parts A, B and D because the specific revisions that are the subject of this action do not interfere with attainment or maintenance of any of the NAAQS and would not interfere with any other applicable requirement of the CAA and are therefore approvable under CAA 110(l) and 40 CFR 51.160-166. Specifically, we are approving the previously described

⁵ CO SIP Revision, Document Set 4, Attachment 2, Pages 12-14.

revisions to sections 1.B.10 and 1.B.44.b(i) of Part A, sections III.C.1.e, III.C.4, and III.D.1 of Part B, and sections II.A.11.a(viii), IV.A, IV.A.1, and IV.A.7 of Part D. The EPA is soliciting public comments on the revisions discussed in this document. The EPA will consider any comments before taking final action.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the revisions described in sections II.A, II.B and II.C of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 30, 2022.

KC Becker,
Regional Administrator,
Region 8.

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